Armitage Lamp Company *and* Warehouse, Mail Order, Office Professional and Technical Employees Union Local 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 13-CA-20097

March 15, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On September 22, 1981, Administrative Law Judge Richard L. Denison issued the attached Decision in this proceeding. No one claiming to represent Respondent filed exceptions. However, Robert N. Goldman and Morton Wallace, named in the Decision as Respondent's secretary/part-owner and president/part-owner, respectively, filed exceptions. N. Donald Reidy, named in the Decision as Respondent's owner, also filed exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and has decided to affirm the rulings,[1] findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Armitage Lamp Company, Chicago, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as modified:

1. Substitute the following for paragraph 1:

"1. Cease and desist from:

"(a) Refusing to bargain with Warehouse, Mail Order, Office, Professional and Technical Employees Union Local 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with respect to the effects on the bargaining unit employees of its decision to close its Chicago, Illinois, facility.

"(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Substitute the following for paragraph 2(a):

"(a) Pay the bargaining unit employees of the former Chicago, Illinois, facility their normal wages for the period set forth in this Decision, with interest as set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962)."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Warehouse, Mail Order, Office, Professional and Technical Employees Union Local 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with respect to the effects of our decision to close our facility located at 30 East 26th Street, Chicago, Illinois 60616, on the bargaining unit employees who were employed there, and WE WILL reduce to writing any agreement reached as a result of such bargaining. The collective-bargaining unit is:

All production and maintenance employees employed by us at our facility; but excluding all office clerical employees, professional employees, salesmen, guards, watchmen, artists, designers, truck drivers, supervisory employees as defined in the Act, and all employees covered by a written agreement with another labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL pay the bargaining unit employees who were employed at the Chicago, Illinois, facility their normal wages with interest for a period required by the National Labor Relations Board.

ARMITAGE LAMP COMPANY

[1] No one claiming to represent Respondent has filed an answer in this case. Therefore, all allegations in the complaint are deemed to be admitted as true. Sec. 102.20 of the Board's Rules and Regulations. Morton Wallace and Robert Goldman filed a response to the complaint and a motion to dismiss themselves as parties. Wallace and Goldman's response and motion deny any liability on their part and allege that they sold the Armitage Lamp Company prior to the commission of the unfair labor practices. However, their response does not affect the liability of Respondent Armitage Lamp Company, for mere change in stock ownership does not absolve a continuing corporation of responsibility under the Act. *Miller Trucking Service, Inc., and/or Miller Trucking Service, Inc., a subsidiary of Tulsa Crude Oil Purchasing Company*, 176 NLRB 556 (1969), enforcement denied for other reasons 445 F.2d 927 (10th Cir. 1971).

DECISION

STATEMENT OF THE CASE

RICHARD L. DENISON, Administrative Law Judge: The hearing in this case opened on March 16, 1981, at Chicago, Illinois. The original charge, alleging violations of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, was filed by Warehouse, Mail Order, Office, Professional and Technical Employees Union Local 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Union, on July 2, 1980,[1] and was served on Respondent by certified mail on July 7, 1980. The return receipt, attached to General Counsel's Exhibit 1(b), signed by R. Goldman, is dated July 7, 1980. An amended charge, dated July 14, alleging violations of Section 8(a)(1), (3), and (5) of the Act, was served on Respondent on July 22, 1980. The return receipt, attached to General Counsel's Exhibit 1(d), signed by R. Goldman, is dated July 22.

The complaint, issued August 12, alleges that the Respondent violated Section 8(a)(5) and (1) of the Act, in that on or about June 27 the Respondent closed its plant and laid off its production and maintenance employees, who were represented by the Union, without prior notice to or collective bargaining with the Union concerning the effects of such action.

No answer has been filed by anyone claiming to represent the Respondent. A response, designated "Answer to Complaint," dated January 22, 1981, was filed by the Respondent's former owners, Robert Goldman and Morton Wallace, denying liability on their part for any of the unfair labor practices allegedly committed by the Respondent, by reason of their alleged sale of the Company on or about May 24.

At the outset of the hearing in this matter counsel for the General Counsel moved that the answer filed by Goldman and Wallace be stricken, and for summary judgment, or in the alternative judgment on the pleadings. I denied counsel for General Counsel's motion to strike the answer of Goldman and Wallace filed on January 22, insofar as it constituted a statement of their position, and, after receiving evidence and hearing arguments, adjourned the hearing for consideration of the merits of counsel for the General Counsel's motion. On March 30, 1981, counsel for Goldman and Wallace filed with me a motion to dismiss Robert N. Goldman and Morton Wallace as parties to this proceeding covering all issues concerning which I might be expected to rule. Permission was not granted by me for the filing of any additional pleadings.

The record in this proceeding is hereby closed.

Ruling on the General Counsel's Motion for Summary Judgment, and on Goldman and Wallace's Motion for Dismissal from this Proceeding as Respondents

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on the Respondent specifically states that unless an answer to the complaint is filed by the Respondent within 10 days of service thereof "all of the allegations in the complaint shall be deemed to be admitted true and may be so found by the Board." The record in this proceeding shows that no one claiming to be the Respondent has ever filed an answer to the complaint or opposed the Motion for Summary Judgment, although the record shows that all possible representatives of the Respondent have been duly served. Furthermore, the first response of any kind to the August 12 complaint was filed by Robert Goldman and Morton Wallace as former presidents and part owners of the Respondent, on January 22, 1981. That document simply stated that they neither admitted nor denied the allegations of the complaint, but merely alleged the sale of the Company on or about May 24 to N. Donald Reidy, who allegedly took over the operation and control of the Company on June 13.

At the conclusion of the hearing on March 16, 1981, I set April 20, 1981, as the date on which briefs, motions, or other documents needing to be filed in connection with my consideration of this matter would be due. On April 6 I received from counsel for Goldman and Wallace a "Motion to Dismiss Robert N. Goldman and Morton Wallace as Parties Hereto," and an "Amended Answer to Complaint." The "Amended Answer to Complaint," filed in the absence of a granted motion to amend the original untimely filed answer, neither admits nor denies the allegations of the complaint, asserts a lack of knowledge or events concerning Armitage Lamp Company after June 13, and denies that Goldman and Wallace were owners or officers of the Respondent after that time.

Therefore, no timely response to the complaint having been filed, and no good cause to the contrary having been shown, in accordance with the Board's Rules set forth above, the allegations of the complaint are deemed to be admitted and found to be true. Accordingly, I grant the General Counsel's Motion for Summary Judgment.

Goldman and Wallace concede that they formed and operated the Respondent for about 15 years, "up until approximately the middle of June 1980." They then met and negotiated with Donald Reidy for the purchase of the assets and liabilities of the Company. The bill of sale, in evidence, is dated June 13. Other documents in evidence show that thereafter Morton Wallace was retained

[1] All dates are in 1980 unless otherwise specified.

by the Company as a management consultant for a term of 60 months, while Goldman continued to be in charge of marketing and sales. On or about June 27, the Respondent closed the plant and laid off its bargaining unit employees. Goldman and Wallace assert that thereafter Reidy decided that he did not want to buy the Company and that Goldman and Wallace could have the Company back. As noted earlier in this Decision, the original charge in Case 13-CA-20097 was filed on July 2, served on the Respondent by certified mail on or about July 3, and received by the Respondent on or about July 7. The return receipt dated July 7, addressed to Respondent, is signed by R. Goldman. Likewise, the amended charge in this case filed July 14, alleging violations of Section 8(a)(1), (3), and (5) of the Act in connection with the events surrounding the closing of the Company's plant on or about June 27, was served on the Respondent by certified mail on or about July 15, and was received by the Respondent on July 22. The return receipt, signed by R. Goldman, is dated July 22. Thus, the record clearly shows that Goldman's and Wallace's association with the Respondent is, at the very least, far too close at the time of the events in question to justify their dismissal from this proceeding at this time. Finally, the decision of the Illinois Department of Labor to the effect that, under the law of the State of Illinois, Wallace and Goldman were not responsible parties for wage claims filed by employees under Illinois law with that department, is not dispositive of sole issue presented here, the Respondent's liability for unfair labor practices. It has been long settled since the earliest days of the Act that Congress has assigned the Board the sole responsibility for assessing liability for the unfair labor practices set forth in Section 8 of the Act. Therefore, Goldman's and Wallace's argument that they are absolved of liability by virtue of the law of the State of Illinois is without merit. Goldman's and Wallace's motion to be dismissed from this proceeding is denied.

On the basis of the entire record, including the consideration of briefs, I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION

The Respondent is, and has been at all times material herein, an Illinois corporation, with its principal office and place of business at 30 East 26th Street, Chicago, Illinois 60616 (herein called the facility), where it has been engaged in the manufacture and wholesale distribution of lamps.

During the last calendar year, a representative period, the Respondent, in the course and conduct of its business operations described above, purchased and received goods valued in excess of $50,000 directly from points outside the State of Illinois.

I find that Respondent is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Supervisory and Agency Status*

At all times material herein, the following-named persons have occupied the positions set forth opposite their respective names, and have been, and are now, agents of the Respondent, acting on its behalf within the meaning of Section 2(13) of the Act, and are supervisors within the meaning of Section 2(11) of the Act: Morton Wallace—secretary and part owner; Robert Goldman—president and part owner; and N. Donald Reidy—owner.

B. *The Appropriate Unit*

All production and maintenance employees employed by the Respondent at the facility; but excluding all office clerical employees, professional employees, salesmen, guards, watchmen, artists, designers, truckdrivers, supervisory employees as defined in the Act, and all employees covered by a written agreement with another labor organization, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since 1965 or 1966, and continuing to date, the Union has been the representative for the purpose of collective bargaining of the employees in the unit described above, and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

C. *The 8(a)(5) and (1) Violations*

On or about June 27, 1980, the Respondent closed its facility and laid off its employees in the unit described above. The Respondent took the action described above without prior notice to the Union, and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the employees with respect to the effects of such action.

I find that by the acts described above, and by each of these acts, the Respondent has failed and refused, and is failing and refusing, to bargain collectively with the representative of its employees and the Respondent has thereby been engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I have found that the Respondent closed its plant on or about June 27, 1980, and laid off its unit employees without prior notice to the Union, and with-

out affording the Union an opportunity to negotiate and bargain on behalf of the employees it represented concerning the effects of such action. It is a well-established principle of Board law that an employer must bargain with the exclusive representative of its unit employees with respect to the effects of plant closure, even where economic reasons were the only motivation for the decision to close. This principle has remained undisturbed in numerous Board and court decisions, and was recently referred to with approval in the United States Supreme Court's latest pronouncement in this area of the law on June 22, 1981, in *First National Maintenance Corp.* v. *N.L.R.B.*, 452 U.S. 66.

The General Counsel has requested that in fashioning a remedy I apply the Board's ruling in *Transmarine Navigation Corporation*, 170 NLRB 389 (1968). I find that request to be appropriate. Here, as in the *Transmarine* case, it is clear that the Respondent's unit employees were not afforded an opportunity for bargaining through their contractual representative prior to the plant's closing, a time when bargaining would have been most effective in easing the hardship of termination on the employees. Thus, under the circumstances, the situation which existed at the time the Respondent's unfair labor practices were committed cannot be restored. Therefore, as noted by the Board, the guiding principle in the search for an appropriate remedy must be "that the wrongdoer, rather than the victims of the wrongdoing, should bear the consequences of his unlawful conduct, and that the remedy should 'be adapted to the situation that calls for redress.'" Consequently, although it is necessary to require the Respondent to bargain with the Union about the effects of the plant closure on its unit employees, a bargaining order must be reinforced by a limited backpay requirement to make whole the employees for losses suffered from the violation and to establish the parties' bargaining position in a posture containing economic consequences for the Respondent. Thus, I shall order the Respondent to bargain with the Union, upon request, concerning the effects on its unit employees at the closed facility, and to pay these employees amounts at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision until the occurrence of the earliest of the following conditions: (1) the date the the Respondent bargains for agreement with the Union on those subjects pertaining to the effects of the closing on the employees in the appropriate collective-bargaining unit at its Chicago, Illinois, facility; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount he would have earned as wages from June 27, 1980, the date on which the Respondent terminated its Chicago, Illinois, operations, to the time he secured equivalent employment elsewhere, whichever occurred sooner, provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[2]

The Respondent, Armitage Lamp Company, Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from refusing to bargain with Warehouse, Mail Order, Office, Professional and Technical Employees Union Local 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with respect to the effects on the bargaining unit employees of its decision to close its Chicago, Illinois, facility.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Pay the bargaining unit employees of the former Chicago, Illinois, facility their normal wages for the period set forth in this Decision.

(b) Upon request, bargain collectively with Warehouse, Mail Order, Office, Professional and Technical Employees Union Local 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with respect to the effects on its bargaining unit employees of its decision to close its Chicago, Illinois, facility, and reduce to writing any agreement reached as a result of such bargaining.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Mail an exact copy of the attached notice marked "Appendix,"[3] to Warehouse, Mail Order, Office, Professional and Technical Employees Union Local 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and to all the bargaining unit employees who were employed at its former Chicago, Illinois, facility. Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by its authorized representative, shall be mailed immediately upon receipt thereof, as herein directed.

(e) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

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[2] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."